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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

KISS, ERIC B

ART UNIT PAPER NUMBER

2122

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/560,473

Applicant(s)

JOHNSON, WILLIAM S

Examiner

Eric B. Kiss

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 April 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The reply filed 6 May 2004 has been received and entered. Claims 1-38 are pending.

Oath/Declaration

2. The substitute Declaration filed 6 May 2004 has been received and entered. The previous objection to the Declaration, as detailed in the previous Office action, is withdrawn in view of Applicant's submission of a compliant substitute Declaration.

Response to Amendment

3. The Examiner has reconsidered the objection to claim 1 at Applicant's request. While the Examiner maintains that the wording of the preamble of claim 1 could be improved, it is nonetheless comprehensible given the context of the entire claim. Therefore, the objection to claim 1 is withdrawn.
4. Applicant's amendment to claim 25 appropriately addresses the rejection of claim 26 under 35 U.S.C. §112, second paragraph, based on indefiniteness. Accordingly, this rejection is withdrawn in view of Applicant's amendment.

Response to Arguments

5. Applicant's arguments with respect to claims 1-38 have been considered but are moot in view of the new ground(s) of rejection.

In response to Applicant's challenges to the statements of Official Notice in the previous Office action, the Examiner has cited references in support of these statements in the claim rejections presented below.

Admitted Prior Art

6. If Applicant does not seasonably traverse the well-known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, Applicant is charged with rebutting the well-known statement in the next reply after the Office action in which the well-known statement was made. This is necessary because the Examiner must be given the opportunity to provide evidence in the next Office action or explain why no evidence is required. If the Examiner adds a reference to the rejection in the next action after applicant's rebuttal, the newly cited reference, if it is added merely as evidence of the prior well known statement, does not result in a new issue and thus the action can potentially be made final.

The object of the following statement is taken to be admitted prior art:

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With regards to performing the prescribed tasks, including receiving and transferring software data, and having the property of being a portable computing device, a personal digital assistant would have been recognized by one having ordinary skill in the computer art at the time the invention was made to be an equivalent of a laptop computer. [see the rejection of claim 34 on pp. 8-9 of the Office action mailed 15 January 2004].

7. Further admitted prior art is found in Applicant's Background of the Invention section of the instant specification. For example, in page 2, line 7, through the end of page 3 of Applicant's disclosure, the nature of the prior art with respect to the use of Authorized Service Contractors (ASCs) to perform upgrades and warranty related service at fueling sites is discussed.

On page 3, in lines 14-15, of the instant disclosure, Applicant states,

The ASC is typically paid for each installation of a program that he or she performs. ... the selling company must have an accurate count of exactly what was provided to the particular fueling site and how many copies were provided so that the ASC may receive his appropriate commission.

Thus, it has been known, as admitted by Applicant, that payment obligations for software upgrades may include commissioning obligations.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 3, 5-7, and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,463,528 to Rajakarunanayake et al.

As per claim 1, *Rajakarunanayake et al.* discloses downloading a software upgrade (configuration information) from a corporate computer (central system 160) to a portable computer (portable system 180; see, for example, col. 6, lines 22-33); accessing a computer at a remote location (customer premise equipment (CPE), defined as a communication device residing in a user's premises and providing communication by interfacing with a compatible device usually part of a larger network) with said portable computing device and uploading said software upgrade to said computer at said remote location (see, for example, col. 1, lines 14-20; see, for example, col. 6, lines 34-61, describing the transfer of data to the CPE from the portable device).

As per claim 3, *Rajakarunanayake et al.* further discloses storing a record indicative of a quantity of upgrades performed (see, for example, col. 8, lines 13-26).

As per claims 5-7, *Rajakarunanayake et al.* further discloses determining a hardware and software configuration at said remote location, storing a record indicative of said hardware and software configuration, and subsequently providing said record to said corporate computer (see, for example, col. 8, lines 10-26).

As per claim 10, *Rajakarunanayake et al.* further discloses compiling a database of a plurality of records indicative of said hardware and software configuration (see, for example, col. 7, lines 20-27 and 37-39).

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 2, 4, 11, and 30-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,463,528 to Rajakarunanayake et al. and U.S. Patent No. 6,442,448 to Finley et al.

As per claim 2, in addition to the disclosure applied above to claim 1, *Rajakarunanayake et al.* fails to expressly disclose the remote location being a remote fueling site.

However, *Finley et al.* teaches that fueling sites can comprise customer premise equipment as defined (see above) in *Rajakarunanayake et al.* (see, for example, col. 11, lines 28-38 of *Finley et al.*, describing some communications hardware associated with a fueling site manager system).

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to modify the system of *Rajakarunanayake et al.* to include transferring software upgrades to a device at a fueling site as per the teachings of *Finley et al.*

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One would be motivated to do so to provide configuration information to equipment in a location that may require such a service.

As per claim 4, in addition to the disclosure applied above to claim 1, *Rajakarunanayake et al.* fails to expressly disclose downloading said software upgrade from said computer to a peripheral device.

However, *Finley et al.* further teach providing software upgrades to a site manager, which manages upgrading of peripheral device (fuel dispenser/dispenser controller) software (see, for example, col. 7, line 55, through col. 14, line 32, discussing the software, hardware, and communications aspects of the site manager).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of *Rajakarunanayake et al.* to include downloading a software upgrade from the computer to a peripheral device as per the teachings of *Finley et al.* One would be motivated to do so to gain the advantage of providing diagnostics/upgrading capability for multiple devices, as provided in the teachings of *Finley et al.*, through a single interface.

As per claim 11, in addition to the disclosure applied above to claim 1, *Rajakarunanayake et al.* fails to expressly disclose accessing a site controller at a remote fueling site.

However, *Finley et al.* further teach that a site controller at a fueling site can comprise customer premise equipment as defined (see above) in *Rajakarunanayake et al.* (see, for

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example, col. 11, lines 28-38 of *Finley et al.*, describing some communications hardware associated with a site controller (site manager)).

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to modify the system of *Rajakarunanayake et al.* to include the transferring means being adapted to communicate with a site controller or a fuel dispenser at a fueling site as per the teachings of *Finley et al.* One would be motivated to do so to provide configuration information to specific equipment in a location that may require such a service.

As per claim 30, *Rajakarunanayake et al.* discloses a portable computing device (portable system 180); a corporate computer (central system 160) including means for downloading to said portable computing device (see, for example, col. 7, lines 5-19), said downloading means transferring a software upgrade (configuration information) to said portable computing device (see, for example, col. 6, lines 22-33); said portable computing device including means to transfer said software upgrade (configuration information) to a device at a remote location (customer premise equipment (CPE), defined as a communication device residing in a user's premises and providing communication by interfacing with a compatible device usually part of a larger network; see, for example, col. 1, lines 14-20; see, for example, col. 6, lines 34-61, describing the transfer of data to the CPE from the portable device); and said portable computing device including means for determining a hardware and software configuration at the remote location, means for recording said configuration, and means to transfer said configuration to said corporate computer (see, for example, col. 8, lines 10-26).

Rajakarunanayake et al. fails to expressly disclose the remote location being a remote fueling site or the device at the remote location being a site controller.

However, *Finley et al.* further teach that a site controller at a fueling site can comprise customer premise equipment as defined (see above) in *Rajakarunanayake et al.* (see, for example, col. 11, lines 28-38 of *Finley et al.*, describing some communications hardware associated with a site controller (site manager)).

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to modify the system of *Rajakarunanayake et al.* to include the transferring means being adapted to communicate with a site controller or a fuel dispenser at a fueling site as per the teachings of *Finley et al.* One would be motivated to do so to provide configuration information to specific equipment in a location that may require such a service.

As per claim 31, in addition to the disclosure and teachings applied above to claim 30, *Rajakarunanayake et al.* further discloses the portable computing device including means for recording commission related data based on a number of software upgrade installations performed by said portable computing device (see, for example, col. 8, lines 10-26). Therefore, for reasons stated above, such a claim also would have been obvious.

As per claim 32, *Rajakarunanayake et al.* discloses a portable computing device (portable system 180); a corporate computer (central system 160) including means for downloading to said portable computing device (see, for example, col. 7, lines 5-19), said downloading means transferring a software upgrade (configuration information) to said portable computing device

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(see, for example, col. 6, lines 22-33); and said portable computing device including means to transfer said software upgrade (configuration information) to a device at a remote location (customer premise equipment (CPE), defined as a communication device residing in a user's premises and providing communication by interfacing with a compatible device usually part of a larger network; see, for example, col. 1, lines 14-20; see, for example, col. 6, lines 34-61, describing the transfer of data to the CPE from the portable device).

Rajakarunanayake et al. fails to expressly disclose the remote location being a remote fueling site.

However, *Finley et al.* teaches that fueling sites can comprise customer premise equipment as defined (see above) in *Rajakarunanayake et al.* (see, for example, col. 11, lines 28-38 of *Finley et al.*, describing some communications hardware associated with a fueling site manager system).

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to modify the system of *Rajakarunanayake et al.* to include transferring software upgrades to a device at a fueling site as per the teachings of *Finley et al.* One would be motivated to do so to provide configuration information to equipment in a location that may require such a service.

As per claims 33 and 34, *Rajakarunanayake et al.* further discloses that the portable computing device (portable system 180) may be a laptop computer or a personal digital assistant (palm computer; see, for example, col. 5, lines 26-38). Therefore, for reasons stated above, such claims also would have been obvious.

As per claim 35, in addition to the disclosure and teachings applied above to claim 32, *Rajakarunanayake et al.* further discloses means for determining upgrades needed at the remote location (see, for example, col. 5, lines 39-54; col. 6, lines 3-12; and col. 7, lines 12-19). Therefore, for reasons stated above, such a claim also would have been obvious.

As per claim 36, in addition to the disclosure and teachings applied above to claim 32, *Rajakarunanayake et al.* further discloses the determining means comprising communications means for accessing the corporate computer (see, for example, see, for example, col. 5, lines 39-54; col. 6, lines 3-12; and col. 7, lines 12-19). Therefore, for reasons stated above, such a claim also would have been obvious.

As per claims 37 and 38, in addition to the disclosure and teachings applied above to claim 32, *Finley et al.* further teach that a site controller and a fuel dispenser at a fueling site can comprise customer premise equipment as defined (see above) in *Rajakarunanayake et al.* (see, for example, col. 11, lines 28-38 of *Finley et al.*, describing some communications hardware associated with a site controller (site manager); and see, for example, col. 16, lines 34-51 of *Finley et al.*, describing some communications hardware associated with a fuel dispenser).

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to modify the system of *Rajakarunanayake et al.* to include the transferring means being adapted to communicate with a site controller or a fuel dispenser at a

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fueling site as per the teachings of *Finley et al.* One would be motivated to do so to provide configuration information to specific equipment in a location that may require such a service.

12. Claims 8, 9, 17-20, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rajakarunanayake et al.* as applied above to claim 1, and further in view of Nathan J. Muller, "Focus on OpenView: A Guide to Hewlett-Packard's Network and Systems Management Platform," 1995, CBM Books (hereinafter *Muller*).

As per claims 8 and 9, in addition to the disclosure applied to claim 1, *Rajakarunanayake et al.* fails to expressly disclose accessing said corporate computer to secure an accounting for upgrades installed and accounting for royalties due a third party based on said upgrades installed.

However, *Muller* teaches, "Part of managing software is knowing what applications are installed throughout the distributed environment, which allows for better planning of software purchases and license conformance," (see p. 182, paragraph 5). One of ordinary skill in the art would recognize that license conformance includes accounting for royalties due for software installed. Further, the context of *Muller*'s software management is an environment of remote software distribution to multiple target computers, wherein the installation is managed by a controller system (see, for example, the preceding text of *Muller*, beginning on p. 179 under the heading "SOFTWARE DISTRIBUTOR").

Therefore, it would have been obvious to one having ordinary skill in the computer art at the time the invention was made to further modify the method of *Rajakarunanayake et al.* to

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include accessing a corporate computer as part of accounting for royalties associated with installed software upgrades in view of the teachings of *Muller*. One would be motivated to do so to facilitate compliance with software licensing agreements.

As per claims 17, 18, 20, and 23, *Rajakarunanayake et al.* discloses providing software upgrades (configuration information) on a portable computing device (portable system 180); directing said portable computing device to a remote location (see, for example, col. 6, lines 34-61); accessing with said portable computing device a computer at said remote location (see, for example, col. 6, lines 34-61); upgrading one or more software components of one or more computers at said remote location (see, for example, col. 6, lines 62-65); storing a record of any upgrades provided and uploading said record to a corporate computer (see, for example, col. 8, lines 10-26).

Rajakarunanayake et al. fails to expressly disclose the uploading of said record to a corporate computer as being for determination of payment obligations.

However, *Muller* teaches, "Part of managing software is knowing what applications are installed throughout the distributed environment, which allows for better planning of software purchases and license conformance," (see p. 182, paragraph 5). One of ordinary skill in the art would recognize that license conformance includes accounting for royalties due for software installed. Further, the context of *Muller*'s software management is an environment of remote software distribution to multiple target computers, wherein the installation is managed by a controller system (see, for example, the preceding text of *Muller*, beginning on p. 179 under the heading "SOFTWARE DISTRIBUTOR").

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Therefore, it would have been obvious to one having ordinary skill in the computer art at the time the invention was made to further modify the method of *Rajakarunanayake et al.* to include accessing a corporate computer as part of accounting for royalties associated with installed software upgrades in view of the teachings of *Muller*. One would be motivated to do so to facilitate compliance with software licensing agreements.

As per claim 19, in addition to the disclosure and teachings applied above, *Rajakarunanayake et al.* fails to expressly disclose payment obligations comprising commissioning obligations.

However, as admitted by Applicant (see the Admitted Prior Art section above), it has been known that payment obligations for software upgrades may include commissioning obligations.

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to further modify the method of *Rajakarunanayake et al.* to include commissioning obligations. One would be motivated to do so to ensure that contractors are paid for work they perform.

13. Claims 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Rajakarunanayake et al.* and *Muller*, as applied to claim 17 above, and further in view of *Finley et al.*

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As per claim 21, in addition to the disclosure and teachings applied above, *Rajakarunanayake et al.* fails to expressly disclose the remote location being a remote fueling site.

However, *Finley et al.* teaches that fueling sites can comprise customer premise equipment as defined (see above) in *Rajakarunanayake et al.* (see, for example, col. 11, lines 28-38 of *Finley et al.*, describing some communications hardware associated with a fueling site manager system).

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to modify the method of *Rajakarunanayake et al.* to include transferring software upgrades to a device at a fueling site as per the teachings of *Finley et al.* One would be motivated to do so to provide configuration information to equipment in a location that may require such a service.

14. Claims 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rajakarunanayake et al.* and *Muller*, as applied to claim 17 above, and further in view of U.S. Patent No. 5,745,268 to Eastvold et al.

As per claims 22 and 24, *Rajakarunanayake et al.* fails to expressly disclose storing a version number associated with each of said any upgrades and storing a version number associated with software existent prior to said upgrade.

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However, *Eastvold et al.* teaches, as part of a system where a field service engineer accesses a computer at a remote location using a portable computing device (field service notebook (see, for example, col. 18, line 20, through col. 21, line 59), a generated site history log containing the version and timestamp for upgrades performed by the field service engineer (see, for example, col. 12, line 66, through col. 13, line 17).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the method of *Rajakarunanayake et al.* to include storing a version number associated with each of said any upgrades and storing a version number associated with software existent prior to said upgrade as per the teachings of *Eastvold et al.* One would be motivated to do so to provide more complete diagnostics information and provide tracking information for software upgrades performed.

15. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rajakarunanayake et al.*, *Muller*, and *Finley et al.*, as applied above to claim 21, and further in view of "Re: Online Manual needed (was Re: ISC vs SCO UNIX review)," 1989, message posted to newsgroup comp.unix.i386 (hereinafter *ISC*).

As per claims 25 and 26, in addition to the disclosure and teachings applied above, *Rajakarunanayake et al.* fails to expressly disclose determining if upgrading resulted from a warranty contract and appropriately accounting for the upgrading based on a warranty contract obligation.

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However, *ISC* discloses details on software upgrade cost and availability for their products, in and out of warranty, and *ISC* teaches that it has been known to provide a warranty on a product comprising software, and to provide free upgrades to that software while the product is under warranty, while charging a fee for the software upgrade if the product is not under warranty (see the two paragraphs preceding the last paragraph).

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to further modify the method of *Rajakarunanayake et al.* to include determining if upgrading resulted from a warranty contract and appropriately accounting for the upgrading based on a warranty contract obligation as per the teachings of *ISC*. One would be motivated to do so to promote customer satisfaction with a software product by fulfilling warranty contracts while promoting profitability for a business by collecting fees for other upgrades.

16. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Rajakarunanayake et al.* in view of U.S. Patent No. 6,601,190 to Meyer et al.

As per claim 27, *Rajakarunanayake et al.* discloses a portable computing device (portable system 180) comprising software adapted to: communicate with a corporate computer (central system 160) and download therefrom a software upgrade package (configuration information; see, for example, col. 6, lines 22-33); communicate with a computer at a remote location and install one or more of said software upgrade packages (see, for example, col. 1, lines 14-20; see,

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for example, col. 6, lines 34-61, describing the transfer of data to the CPE from the portable device); and record indicia relating to a number of software upgrade packages installed (see, for example, col. 8, lines 10-26).

Rajakarunanayake et al. fails to expressly disclose the portable device being adapted to poll the computer at the remote location to determine a hardware configuration and a software configuration at the remote location.

However, *Rajakarunanayake et al.* does disclose the portable computing device being capable of performing a diagnostics operation (see, for example, col. 10, lines 9-23; and Fig. 5) and further, a hardware detection routine (see, for example, col. 10, lines 45-50; and Fig. 5). *Meyer et al.* teaches, "The information offered by diagnostics programs is usually extensive, detailed information relating to hardware and software configurations, minor changes in which are usually the cause of computer faults," (see col. 1, lines 31-34).

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to modify the portable device and software of *Rajakarunanayake et al.* to include polling the computer at the remote location to determine a hardware configuration and a software configuration at the remote location in view of the teachings of *Meyer et al.*

17. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Rajakarunanayake et al.* and *Meyer et al.*, as applied to claim 27, and further in view of *Muller*.

As per claim 28, in addition to the disclosure applied to claim 27, *Rajakarunanayake et al.* fails to expressly disclose accessing said corporate computer to secure an accounting for upgrades installed and accounting for royalties due a third party based on said upgrades installed.

However, *Muller* teaches, "Part of managing software is knowing what applications are installed throughout the distributed environment, which allows for better planning of software purchases and license conformance," (see p. 182, paragraph 5). One of ordinary skill in the art would recognize that license conformance includes accounting for royalties due for software installed. Further, the context of *Muller*'s software management is an environment of remote software distribution to multiple target computers, wherein the installation is managed by a controller system (see, for example, the preceding text of *Muller*, beginning on p. 179 under the heading "SOFTWARE DISTRIBUTOR").

Therefore, it would have been obvious to one having ordinary skill in the computer art at the time the invention was made to further modify the portable device and software of *Rajakarunanayake et al.* to include accessing a corporate computer as part of accounting for royalties associated with installed software upgrades in view of the teachings of *Muller*. One would be motivated to do so to facilitate compliance with software licensing agreements.

18. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Rajakarunanayake et al.* and Meyer et al., as applied to claim 27, and further in view of "patch from FOLDLOC," 1996 (hereinafter *FOLDLOC*).

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As per claim 29, in addition to the disclosure applied to claim 27, *Rajakarunanayake et al.* fails to expressly disclose the software being adapted to install a patch to enable functioning of said software upgrade package on said computer at said remote location.

However, *FOLDOC* teaches that patching has been a well-known means to implement software upgrades.

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to further modify the portable device and software of *Rajakarunanayake et al.* to include patching as per the teachings of *FOLDOC*. One would be motivated to do so to provide more efficient software upgrading by only updating those portions of code that need to be updated.

19. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rajakarunanayake et al.* in view of *Finley et al.* and *Meyer et al.*

As per claims 12-14, *Rajakarunanayake et al.* discloses sending an individual equipped (provided with) a portable computing device to a plurality of remote sites (see, for example, col. 6, lines 3-23); storing, and uploading to a corporate computer through a web based interface (central system 160 through interface 168), a plurality of records, each of said records relating to different ones of said remote sites, said record detailing hardware and software configuration at the remote site (see, for example, col. 8, lines 10-26).

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Rajakarunanayake et al. fails to expressly disclose the remote location being remote fueling sites.

However, *Finley et al.* teaches that fueling sites can comprise customer premise equipment as defined (see above) in *Rajakarunanayake et al.* (see, for example, col. 11, lines 28-38 of *Finley et al.*, describing some communications hardware associated with a fueling site manager system).

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to modify the method of *Rajakarunanayake et al.* to include transferring software upgrades to a device at a fueling site as per the teachings of *Finley et al.* One would be motivated to do so to provide configuration information to equipment in a location that may require such a service.

Rajakarunanayake et al. fails to expressly disclose the portable device being adapted to poll the computer at the remote location to determine a hardware configuration and a software configuration at the remote location.

However, *Rajakarunanayake et al.* does disclose the portable computing device being capable of performing a diagnostics operation (see, for example, col. 10, lines 9-23; and Fig. 5) and further, a hardware detection routine (see, for example, col. 10, lines 45-50; and Fig. 5). *Meyer et al.* teaches, "The information offered by diagnostics programs is usually extensive, detailed information relating to hardware and software configurations, minor changes in which are usually the cause of computer faults," (see col. 1, lines 31-34).

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to modify the method of *Rajakarunanayake et al.* to include polling

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the computer at the remote location to determine a hardware configuration and a software configuration at the remote location in view of the teachings of *Meyer et al.*

As per claim 15, in addition to the disclosure and teachings applied above to claim 12, *Rajakarunanayake et al.* fails to expressly disclose accessing a site controller at a remote fueling site.

However, *Finley et al.* further teach that a site controller at a fueling site can comprise customer premise equipment as defined (see above) in *Rajakarunanayake et al.* (see, for example, col. 11, lines 28-38 of *Finley et al.*, describing some communications hardware associated with a site controller (site manager)).

Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to further modify the method of *Rajakarunanayake et al.* to include communication with a site controller as per the teachings of *Finley et al.* One would be motivated to do so to provide configuration information to specific equipment in a location that may require such a service.

As per claim 16, in addition to the disclosure and teachings applied above to claim 12, *Rajakarunanayake et al.* discloses compiling a database of a plurality of records indicative of said hardware and software configuration (see, for example, col. 7, lines 20-27 and 37-39). Therefore, for reasons stated above, such a claim also would have been obvious.

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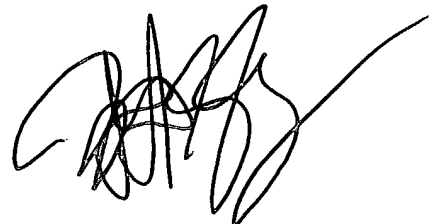
Conclusion

20. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric B. Kiss whose telephone number is (703) 305-7737. The Examiner can normally be reached on Tue. - Fri., 7:30 am - 5:00 pm. The Examiner can also be reached on alternate Mondays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Tuan Dam, can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EBK/~~EBK~~
July 30, 2004



TODD INGBERG
PRIMARY EXAMINER